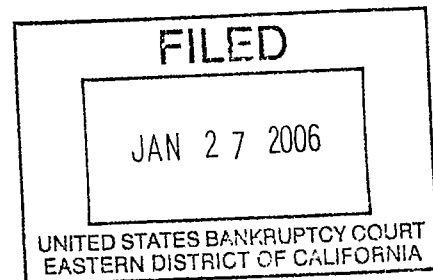


u



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 05-32919-C-7
)	
MIGUEL GUTIERREZ,)	MC No. SPS-1
)	
Debtor.)	
_____)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR RELIEF FROM AUTOMATIC STAY**

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014. Evidence was taken pursuant to Federal Rule of Civil Procedure 43(e), as incorporated by Federal Rule of Bankruptcy Procedure 9017 and as invoked by Local Bankruptcy Rule 9014(e).

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

30

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

On December 20, 2005, Patelco Credit Union, ("movant") filed a motion, notice, and declaration requesting that this court vacate the automatic stay to permit movant to repossess the vehicle. The Kelley Blue Book value of the vehicle is approximately \$8,312.50. Movant holds a lien on the vehicle in the approximate amount of \$13,810.97. The court is not aware of any other liens against the vehicle. No opposition to the motion was filed. Upon review of the record, the court determined that the written record was adequate and that no oral argument is necessary.

The automatic stay of acts against debtors in personam and of acts against property other than property of the estate continues until the earliest of the time when the bankruptcy case is closed, dismissed, or an individual in a chapter 7 case is granted a discharge. 11 U.S.C. § 362(c).

The automatic stay may be terminated earlier if
debtors fail to protect the secured party's interest

1 adequately, § 362(d)(1), and, with respect to a stay of an act
2 against property, debtors do not have equity in the property, §
3 362(d)(2)(A), and the property is not necessary to an effective
4 reorganization. 11 U.S.C. § 362(d)(2)(B). The issue of
5 whether the property is necessary to an effective
6 reorganization is not considered in a chapter 7 case because no
7 reorganization is contemplated in a chapter 7 case.

8 Although the debtor does not appear to have any
9 equity in the vehicle, since the debtor was granted a
10 discharge, the motion for relief from the automatic stay is
11 moot as to the debtor. Thus, the motion will be denied.

12 However, because the chapter 7 trustee filed a no
13 asset report, and filed no opposition to the motion, the motion
14 will be granted as to the trustee.

15 An appropriate order will issue.

16 Dated: January 27, 2006

17
18 
19 UNITED STATES BANKRUPTCY JUDGE
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Miguel Gutierrez
6217 Fowler Ave.
Sacramento, CA 95828

Gregory J. Smith
109 Darling Way
Roseville, CA 95678-0192

John R. Roberts
P.O. Box 1506
Placerville, CA 95667

Office of the United States Trustee
United States Courthouse
501 "I" Street, Suite 7-500
Sacramento, CA 95814

Spencer P. Scheer
Scheer & Imfeld, LLP
100 Smith Ranch Road, Suite 306
San Rafael, CA 94903

Dated: 1/30/06

Melissa McIntosh
Deputy Clerk